

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LEONARD COTTRELL et al., on
behalf of themselves and all others
similarly situated,

Plaintiffs,

V.

ALCON LABORATORIES, INC. et
al.,

Defendants.

Civil Action No.: 3:14-cv-05859-BRM-LHG

Return Date: November 5, 2018

**NOTICE OF BRAND NAME DEFENDANTS' RENEWED MOTION TO
DISMISS AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P.
12(b)(6) AND DEFENDANT PFIZER INC.'S RENEWED MOTION TO
STRIKE PURSUANT TO FED. R. CIV. P. 12(f)**

PLEASE TAKE NOTICE that on November 5, 2018, or as soon as counsel can be heard, the undersigned counsel for Defendants Alcon Laboratories, Inc., Alcon Research, Ltd., Allergan, Inc., Allergan USA, Inc., Allergan Sales, LLC, Pfizer Inc., Valeant Pharmaceuticals International, Inc., Bausch and Lomb Incorporated, Aton Pharma, Inc., Merck & Co., Inc., and Merck, Sharp & Dohme Corp. (collectively, “Brand Name Defendants”) shall move before the Honorable Brian R. Martinotti, U.S.D.J., at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building and U.S. Courthouse, 402 East State Street, Trenton, New Jersey for the entry of an Order dismissing with prejudice Plaintiffs’ Amended Class Action Complaint (Dkt. No. 84) filed in this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, Brand Name Defendants will rely upon the Memorandum, submitted herewith in support of this Motion, and any additional replies or submissions made hereafter. Brand Name Defendants Alcon Laboratories, Inc., Alcon Research, Ltd., Valeant Pharmaceuticals International, Inc., and Bausch and Lomb Incorporated also rely upon the Memorandum filed in support of the Generic Defendants’ Motion to Dismiss, to the extent these Brand Name Defendants also manufacture and/or distribute generic products that are at issue in Plaintiffs’ Amended Complaint.

Pursuant to Federal Rule of Civil Procedure 12(f), Brand Name Defendant Pfizer Inc. also moves to strike Plaintiffs’ addition of allegations about a generic product allegedly manufactured by Pfizer (*see* Am. Compl. ¶¶ 38, 48) because these new allegations exceed the scope of leave to amend granted by this Court.

See Dkt. No. 82 (Opinion) at 18 (granting leave to amend only “to cure the deficiencies consistent with the dictates of this Opinion”); *see also U.F.C.W. Local 56 Health and Welfare Fund v. J.D.’s Market*, 240 F.R.D. 149, 154 (D.N.J. 2007) (striking amended complaint allegations that exceeded scope of leave to amend “because to hold otherwise would be to essentially ignore Fed. R. Civ. P. 15(a) and the requirement that a plaintiff seek leave before amending its complaint”). In the event this Court permits Plaintiffs to exceed the scope of leave to amend they were granted, however, Pfizer also relies upon the Memorandum filed in support of the Generic Defendants’ Motion to Dismiss, to the extent Plaintiffs allege that Pfizer manufactures a generic product at issue in the Amended Complaint.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted herewith.

Dated: August 24, 2018

Respectfully submitted,

/s/ Liza Walsh

Liza M. Walsh

WALSH PIZZI O’REILLY

FALANGA LLP

One Riverfront Plaza

1037 Raymond Blvd., 6th Floor

Newark, NJ 07102

T: 973.757.1100

F: 973.757.1090

Robyn E. Bladow (*pro hac vice*)
Austin Norris (*pro hac vice*)
KIRKLAND & ELLIS LLP
333 South Hope Street
Los Angeles, CA 90071
(213) 680-8400

Attorneys for Defendant Pfizer Inc.

/s/ Robert J. McGuirl

Robert J. McGuirl, #003631981
LAW OFFICES OF ROBERT J.
McGUIRL, LLC
295 Spring Valley Road
Park Ridge, NJ 07656
Telephone: (201) 391-8200

James P. Muehlberger (*pro hac vice*)
Lori A. McGroder (*pro hac vice*)
SHOOK HARDY & BACON L.L.P.
2555 Grand Boulevard
Kansas City, MO 64108
(816) 474-6550

*Attorneys for Defendants Allergan
Inc., Allergan USA, Inc., and Allergan
Sales, LLC*

/s/ Liza M. Walsh

Liza M. Walsh
WALSH PIZZI O'REILLY
FALANGA LLP
One Riverfront Plaza
1037 Raymond Blvd., 6th Floor
Newark, NJ 07102
T: 973.757.1100
F: 973.757.1090

John P. Bueker (*pro hac vice*)
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7000

*Attorneys for Valeant
Pharmaceuticals International, Inc.,
n/k/a Bausch Health Companies, Inc.,
Bausch and Lomb Incorporated, Aton
Pharma, Inc.*

/s/ Roger B. Kaplan

Roger B. Kaplan
GREENBERG TRAURIG, LLP
200 Park Avenue, P.O. Box 677
Florham Park, NJ 07932-0677
(973) 360-7957

Lori G. Cohen (*pro hac vice*)
GREENBERG TRAURIG, LLP
3333 Piedmont Road NE, Suite 2500
Atlanta, Georgia 30305
(678) 553-2100

Gregory E. Ostfeld (*pro hac vice*)
GREENBERG TRAURIG, LLP
77 W. Wacker Drive, Suite 3100
Chicago, Illinois 60601
(312) 456-8400

*Attorneys for Defendants Alcon
Laboratories, Inc. and Alcon
Research, Ltd.*

/s/ Charles B. Casper

Charles B. Casper
MONTGOMERY McCracken
Walker & Rhoads, LLP
LibertyView, Suite 600
457 Haddonfield Road
Cherry Hill, NJ 08002
(856) 488-7700

Stephen G. Strauss
Randy J. Soriano
Timothy J. Hasken
(*pro hac vice*)
Bryan Cave Leighton
Paisner LLP
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
(314) 259-2000

*Attorneys for Defendants Merck &
Co., Inc., Merck Sharpe Dohme, and
Prasco, LLC*